

CMEC USE

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**COLES-MOULTRIE ELECTRIC COOPERATIVE
AGREEMENT FOR PURCHASE OF POWER**

THIS AGREEMENT made this ____ day of _____ 2004, by and between the **COLES-MOULTRIE ELECTRIC COOPERATIVE**, an Illinois Not for Profit Corporation with its principle office in Mattoon, Coles County, Illinois (hereinafter referred to as "Seller") and **AGRACEL, INC.**, an Illinois Corporation with its principle office in Effingham, Effingham County, Illinois (hereinafter referred to as "Developer");

WHEREAS, Seller is engaged in the business of supplying electric energy and maintains the infrastructure necessary to supply electric energy in the area of the South one-half (S1/2) of Section Sixteen (16), Township Twelve (12) North, Range Eight (8) East of the Third Principle Meridian, Coles County, Illinois; and

WHEREAS, the Developer is engaged in a venture to subdivide and develop property in said area consisting of the following described premises:

THE NORTH ONE HALF (N 1/2) OF THE SOUTHWEST QUARTER (SW 1/4) AND THE NORTHWEST QUARTER (NW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) EXCEPT THOSE PORTIONS PREVIOUSLY CONVEYED FOR PUBLIC HIGHWAY PURPOSES ALL IN SECTION SIXTEEN (16), TOWNSHIP TWELVE (12) NORTH, RANGE EIGHT (8) EAST OF THE THIRD PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION

SIXTEEN (16); THENCE SOUTH 0°17'32" WEST [BEARINGS BASED ON F.A.I. ROUTE 04 (I-57) R.O.W. PLAT] A DISTANCE OF 1331.09 FEET ALONG THE EAST LINE OF SAID SECTION SIXTEEN (16); THENCE SOUTH 88°16'20" WEST A DISTANCE OF 1329.10 FEET TO A POINT IN THE WEST RIGHT OF WAY LINE OF LERNA ROAD AND THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 88°16'20" WEST, A DISTANCE OF 3580.55 FEET TO A POINT IN THE EAST RIGHT OF WAY LINE OF F.A.I. ROUTE 04 (I-57); THENCE NORTH 04°25'49" EAST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 234.86 FEET; THENCE NORTH 17°12'02" EAST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 317.84 FEET; THENCE NORTH 47°55'25" EAST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 404.60 FEET; THENCE NORTH 23°17'43" EAST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 352.33 FEET; THENCE NORTH 73°03'10" EAST ALONG THE SOUTH RIGHT OF WAY LINE OF F.A. RT. 17 (IL RT. 16), A DISTANCE OF 286.40 FEET; THENCE NORTH 86°24'38" EAST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 500.62 FEET; THENCE NORTH 85°50'22" EAST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 250.45 FEET; THENCE NORTH 89°16'21" EAST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 1923.01 FEET; THENCE SOUTH 32°09'38" EAST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 152.36 FEET; THENCE SOUTH 00°29'12" EAST ALONG THE WEST RIGHT OF WAY LINE OF LERNA ROAD, A DISTANCE OF 317.39 FEET; THENCE SOUTH 02°22'33" WEST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 200.25 FEET; THENCE SOUTH 00°29'12" EAST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 300.00 FEET; THENCE SOUTH 05°13'26" WEST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 100.50 FEET; THENCE SOUTH 05°03'38" EAST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 136.00 FEET TO THE POINT OF BEGINNING, CONTAINING 91.531 ACRES MORE OR LESS.

AND ALSO

THE SOUTHWEST QUARTER (SW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) AND A PART OF THE SOUTHEAST QUARTER (SE 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) AND A PART OF THE SOUTHEAST (SE 1/4) OF THE SOUTHWEST QUARTER (SW 1/4) ALL IN

SECTION SIXTEEN (16), TOWNSHIP TWELVE (12) NORTH,
RANGE EIGHT (8) EAST OF THE THIRD PRINCIPLE
MERIDIAN, MORE PARTICULARLY DESCRIBED AS
FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE
SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION
SIXTEEN (16); THENCE SOUTH 0°17'32" WEST [BEARINGS
BASED ON F.A.I. ROUTE 04 (I-57) R.O.W. PLAT] A
DISTANCE OF 1331.09 FEET ALONG THE EAST LINE OF
SAID SECTION SIXTEEN (16); THENCE SOUTH 88°16'20"
WEST A DISTANCE OF 1329.10 FEET TO A POINT IN THE
WEST RIGHT OF WAY LINE OF LERNA ROAD AND THE
POINT OF BEGINNING; THENCE SOUTH 05°03'38" EAST
ALONG SAID WEST RIGHT OF WAY LINE OF LERNA
ROAD, A DISTANCE OF 114.80 FEET; THENCE SOUTH
00°29'12" EAST ALONG SAID WEST RIGHT OF WAY LINE
OF LERNA ROAD, 1218.21 FEET TO A POINT ON THE
SOUTH LINE OF SAID SECTION 16; THENCE SOUTH
88°09'57" WEST ALONG SAID SOUTH LINE OF SECTION
16, A DISTANCE OF 1875.50 FEET; THENCE NORTH
00°11'59" WEST A DISTANCE OF 1336.49 FEET; THENCE
NORTH 88°16'20" EAST A DISTANCE OF 1859.57 FEET TO
THE POINT OF BEGINNING, CONTAINING 58.503 ACRES
MORE OR LESS.

FOR A SUM TOTAL OF 148.862 ACRES MORE OR LESS,
ALL SITUATED IN LAFAYETTE TOWNSHIP, COLES
COUNTY, ILLINOIS.

[hereinafter referred to as the premises]; and

WHEREAS, the development proposed upon the premises includes a subdivision of
the premises, the development of a hotel and convention center and the sale and/or
development of various subdivision lots upon the premises; and

WHEREAS, the Developer has asked the Seller to serve as the exclusive provider
of all electrical energy to be used upon the premises and for the proposed development;
and

WHEREAS, the Developer has asked the Seller to provide certain incentives
including the development, installation and construction of electrical distribution facilities

upon the premises:

NOW THEREFORE, in consideration of the terms, conditions and covenants herein to be performed by the parties, it is hereby agreed as follows:

(1) **AGREEMENT TO SELL:** The Seller agrees to sell and deliver to the Developer and its grantees, lessees, successors in interest and assigns, all the electrical energy that the Developer and its grantees, lessees, successors in interest and assigns may require upon the premises.

(2) **AGREEMENT TO BUY:** The Developer and its grantees, lessees, successors in interest and assigns agree to purchase from the Seller all the electrical energy required by the Developer and its grantees, lessees, successors in interest and assigns upon the premises.

(3) **COVENANT RUNNING WITH LAND:** In consideration of the improvements to be constructed upon the premises by the Seller pursuant to the terms of this agreement, the Developer agrees that any subdivision plat, deed, lease or other conveyance of property within the premises shall include a covenant requiring the Developer's successor in interest to purchase its requirements of electrical energy from the Seller and said agreement shall be a covenant running with the land that ensures that Coles Moultrie Electric Cooperative shall be the exclusive provider of electrical energy for the property. A memorandum giving notice of the restrictions provided for in this agreement may be recorded by either party to this agreement.

(4) **FACILITIES:** The Seller shall construct and install underground "three phase" circuitry necessary to reasonably serve the development planned by the Developer upon the premises and at such locations as may be reasonably agreed to by the parties. Such three phase circuitry shall be constructed with underground conductors as are necessary to satisfy local building codes and with sufficient capacity to provide 12,470 Volt wye/7,200 Volt, alternating current primary service. Each underground conductor shall terminate in an enclosure at such locations upon the premises as the parties may mutually agree. The proposed three phase circuitry will be designed to provide for closed transition, loop feed capability to the business park.

(5) **CONVENTION CENTER FACILITIES:** In addition to those facilities provided for in paragraph 4 of this agreement, the Seller agrees to install and construct the underground circuitry that may be reasonably necessary to provide electrical service to the hotel and convention center proposed by the Developer. The Seller shall also install a pad mounted transformer and metering necessary to complete the delivery of electric power and energy to the hotel and convention center building. The pad necessary for the transformer and all electric service infrastructure for the hotel and convention center beyond the meter shall remain the sole responsibility of the Developer and Developer agrees to construct said improvements in conformity with all applicable code requirements.

(6) **FACILITIES FOR OTHER DEVELOPMENTS IN THE PARK:** Parties to this agreement acknowledge and agree that the Seller shall not be responsible for the extension of electrical service to any other development or structure upon the premises other than as provided for in paragraph 5 for the hotel and convention center. The extension of electrical service beyond the enclosures to be constructed by the Seller for the termination of three phase circuitry shall be at the sole cost and expense of the Developer or its grantees, lessees, successors in interest or assigns.

(7) **RELOCATION OF FACILITIES:** Upon completion of the electrical infrastructure, pursuant to paragraphs 4 and 5 of this agreement, any relocation or alteration of the electrical service infrastructure necessary for the development shall be at the sole cost and expense of the Developer, its grantees, lessees, successors in interest or assigns.

(8) **NO RESALE OF ELECTRIC ENERGY:** The Developer, its grantees, lessees and successors in interest or assigns shall be prohibited from selling or reselling any electrical energy from the proposed development.

(9) **RATE:** The Developer, its grantees, lessees, successors in interest and assigns shall pay Seller for electrical service to be provided under this agreement at rates and upon such terms and conditions as shall be set forth in the applicable rate schedules adopted by the Seller from time to time.

(10) **COOPERATIVE MEMBERSHIP:** AGRACEL, Inc., as the Developer, does hereby apply for membership with Seller and Seller does hereby accept AGRACEL's

application for membership. Any and all future entities that may develop, lease or purchase property upon the premises shall be required to become a member of the Coles Moultrie Electric Cooperative as a prerequisite to the Seller's delivery of electrical energy to that entity's property within the premises.

(11) **EASEMENTS:** Developer shall provide to the Seller the easements reasonably necessary to Seller for the construction, maintenance and operation of the electrical service infrastructures to be constructed under this agreement. Authorized representatives of the Seller shall be permitted to enter upon said easements at all reasonable times in order to service the electrical infrastructure and to otherwise carry out the provisions of this agreement.

(12) **EFFECTIVE DATE:** This agreement shall become effective upon the execution of the agreement by the parties, provided that the parties acknowledge that Central Illinois Public Service Company, d/b/a Ameren CIPS (CIPS) has filed a complaint against Coles-Moultrie Electric Cooperative (Coles-Moultrie/Seller) with the Illinois Commerce Commission (Commission) in docket No. 03-0723 in which CIPS claims the right to be the exclusive electrical service provider to the Development's premises. Accordingly, in the event that the Commission enters a final order that CIPS is the appropriate electrical service provider for the Development's premises, the parties agree that this agreement and the rights of the parties herein are terminated.

(13) **OUTAGES/NON-DELIVERY:** An outage or inability to deliver electrical power or energy shall not constitute a breach on the Seller's part. Seller shall not be liable for any failure to deliver electrical power or energy. However, the Seller shall be required to make such reasonable efforts as may be necessary to restore electrical service to the premises upon notice by the Developer, its grantees, lessees, successors in interest and/or assigns.

(14) **ENTIRETY OF AGREEMENT:** No prior stipulation, agreement or understanding of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

(15) **AMENDMENTS:** This contract shall not be amended except as agreed to by the parties in writing.

(16) **APPLICABLE LAW:** The validity, construction and performance of this agreement shall be governed by the laws of the State of Illinois.

(17) **BREACH:** In the event of a breach or in the event that either party is required to engage an attorney to secure the other parties performance under this contract, the breaching or defaulting party will be responsible for all reasonable attorneys fees incurred to secure the breaching or defaulting parties performance.

(18) **CONTRACT BIND SUCCESSORS AND ASSIGNS:** This agreement shall be binding upon successors and assigns to the parties of this agreement.

(19) **AUTHORITY:** The corporate parties have executed this agreement pursuant to proper authority granted to the representatives of each party by the Board of Directors for each corporate entity.

IN THE WITNESS WHEREOF, the parties have executed this agreement as of the date and year above written.

SELLER

COLES-MOULTRIE ELECTRIC COOPERATIVE

By: _____

Date: _____

DEVELOPER

AGRACEL, INC.

By: _____

Date: _____